**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 12689 of 2000**
**With**
**SPECIAL CIVIL APPLICATION No. 9561 of 2001**
**With**
**CIVIL APPLICATION No. 6563 of 2001**
**In**
**SPECIAL CIVIL APPLICATION No. 12689 of 2000**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Petitioner(s)**
**Versus**
**ABDULBHAI MOHMEDBHAI SHAIKH - Respondent(s)**

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**Appearance :**
MS MANISHA LAVKUMAR ASST.GOVERNMENT PLEADER for State – Employer
MR PH PATHAK for Workman

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 11/09/2007**

**ORAL JUDGMENT**

1. The State, being aggrieved by the Award dtd.29/10/1999 passed by the Labour Court, Kalol in Reference (LCK)

No.452 of 1990, directing reinstatement of the workman without back wages but with the benefit of continuity of service, is before this Court in Special Civil Application No.12689 of 1990 with a submission that the court below was unjustified in directing reinstatement of the workman. The workman is also before this Court in Special Civil Application No.9561 of 2001 with a submission that the court below was unjustified in not awarding the back wages.

2. Ms.Manisha Lavkumar, learned Assistant Government Pleader for the State submitted that the court below was unjustified in holding that the Irrigation Department would be an industry for the purposes of Industrial Disputes Act and further erred in holding that the workman had acquired status of a workman as he had worked for 11 years. The submission is that unless the workman had proved that he had worked for 240 or more days in 12 calender months preceding the date of termination, such workman would not be entitled to any relief.

3. Mr.Pathak, learned counsel for the workman, however, submitted that in view of admissions made by the other-side that the workman had worked for more than 11

years, that too, without any break or so, this Court should hold that a separate finding is not required. It is also contended by Mr.Pathak, learned counsel for the workman that the court below was obliged to award back wages in view of its findings that the workman was unceremoniously removed from service. The learned Assistant Government Pleader for the State, however, submitted that as the workman is not entitled to reinstatement, the question of back wages does not arise and in case the order of reinstatement is held to be proper, then too, the workman would not be entitled to any back wages, because, the court below, for the reasons stated in the order, has not exercised its discretion in favour of the workman.

4. In certain connected matters being Special Civil Application Nos.6697 to 6716 of 2001 (Superintending Engineer Vs. R.Chhanabhai Nathabhai), learned Single Judge of this Court vide his common judgement dtd.24/8/2004 has observed that in the peculiar circumstances of the case, Irrigation Department would be taken to be an industry. The said judgement was also in the identical set of the facts.

5. In view of the said judgement I find no difficulty in

rejecting the submissions made by the learned Assistant Government Pleader for the State.

6. So far as the question of 240 days is concerned, the court below has relied upon certain statements made by the witnesses of the State, who had categorically admitted that the workman after his joining in the year 1975 had continuously worked upto 21/7/1986 and during the said period, he was neither removed nor stopped. If such is the admissions by the witnesses of the State, then, a specific finding that the workman had worked for 240 or more days in 12 calender months preceding the date of removal / retrenchment, would not be required.
7. Special Civil Application No.12689 of 2000 filed by the State does not merit. It deserves to and is accordingly rejected. Interim relief, if any, is vacated. No costs.
8. So far as non-grant of back wages is concerned, the court below has given proper reasons for not awarding back wages for the period prior to the reference. I do not think that present is a fit case where High Court should interfere with the discretion exercised by the learned Labour Court. Special Civil Application No.9561 of 2001 filed by the workman is also dismissed. No costs.
9. In view of dismissal of both the petitions, Civil Application

No.6563 of 2001 stands disposed of. No costs.

(R.S. GARG, J.)

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